

INTERNET TASK FORCE REPORT

**Virginia
Motor Vehicle Dealer Board**

**ADOPTED
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INTERNET TASK FORCE REPORT

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I. Introduction

The 1995 General Assembly established the Motor Vehicle Dealer Board. This board, composed primarily of motor vehicle dealers, has the responsibility for oversight of the motor vehicle dealer industry.

Members of the Board represent all areas of the Commonwealth. In addition, they represent all levels of ownership. Board members include those that own several large dealerships to those with small operations and just a few employees. This cross section ensures that all perspectives of the industry have a voice on the Board.

The Board has seven standing committees. At any given time there may be one or more functioning subcommittees or a special task force who have a specific assignment. Once these assignments are completed, the subcommittees/task force are disbanded.

It was under the direction of Rick Holcomb, Board Chairman, that the Internet Task Force was created. The Task Force was created to review emerging Internet and associated e-commerce vehicle sales industry issues. The Task Force was to examine these issues from the perspective of both the dealer and consumers. The objective of this review was to submit recommendations to the Motor Vehicle Dealer Board for their consideration and guidance for future policy determinations.

While the Board had determined that they would not be pursuing legislative changes in 2001, a review would assist in analyzing proposals that might be sponsored by others.

In order to ensure a comprehensive dialogue on the issues, Board Chairman Holcomb appointed a diverse group to the Internet Task Force. A list of the Task Force members is included at the end of this introduction.

The first meeting of the Task Force held May 16, 2000 was an opportunity for these members to familiarize themselves with the group objectives, and offer any insight on the topic from their perspectives to other group members. Subsequent meetings, six in all, focused heavily on the task at hand by developing model scenarios based on hypothetical (but possible) industry-related e-commerce transactions.

After developing the scenarios, the Task Force reviewed each model to determine its potential impact on consumers and dealers. The members performed this review without regard to current laws. It was believed that in order to perform this review and analysis, the members would need to do so without being encumbered by current law. Once the review of the models was completed, a second review by a subcommittee was performed to determine if and what changes to the Code of Virginia might be required. This subcommittee reported its findings to the Task Force.

This report includes the results of both of these reviews and is submitted to the Motor Vehicle Dealer Board for their review and consideration.

TASK FORCE MEMBERS

Chair

Karen Radley - *Radley Automotive, Fredericksburg*

Dealer Board Members

Tom Barton -- *Beach Ford, Virginia Beach*
Clyde King -- *King Motor Company, Abingdon*
Margo Clarke -- *Consumer, Richmond*
Mike Martin -- *Dudley Martin Chevrolet, Manassas*
Steve Farmer -- *Steve Farmer Auto Sales, Altavista*
Bruce Farrell -- *Berglund Chevrolet Buick Jeep, Roanoke*

Other Members

Andy Alvarez -- *Division of Consumer Services, Virginia Department of Agriculture and Consumer Services*
James Beamer -- *Representing the Alliance of Automobile Manufacturers*
Steve Cannon or designee -- *CarMax, Richmond*
John Lally -- *Greenlight.com*
Chris Doss -- *Virginia Information Providers Network*
Don Hall or designee -- *Virginia Automobile Dealers Association*
Lois Keenan or David Boling -- *Virginia Independent Automobile Dealers Association*
Roger Leek -- *Richmond Times Dispatch*
Marianne Radcliff or designee -- *Williams Mullen Public Affairs (Representing Ford Motor Company)*
Vince Sheehy -- *Sheehy Automotive Group, Fairfax*
Jerry Simonoff -- *Department of Technology Planning*
Steve Snyder -- *Checkered Flag, Virginia Beach*

Staff

Bruce Gould -- *Virginia Motor Vehicle Dealer Board*
Katherine Idrissi -- *Virginia Motor Vehicle Dealer Board*
Joanne Maxwell -- *Virginia Department of Motor Vehicles*
Joe Owsiak -- *Virginia Department of Motor Vehicles*
Steve Stupasky -- *Virginia Department of Motor Vehicles*
Rick Walton -- *Virginia Office of the Attorney General*

II. Overview of Internet Task Force Policy Discussions

The Internet Task Force (“ITF”) believes that the Internet can be a valuable tool for consumers, licensed motor vehicle dealers, dotcoms, and other third-parties involved in the sale or lease of motor vehicles in Virginia. However, the ITF also recognizes that the Internet brings with it many issues that have never been contemplated by regulators, dealers, manufacturers or consumers. For this reason, the ITF discussions and consequent recommendations embrace the Internet as a useful tool, while also recognizing that the current statutory and regulatory framework governing motor vehicle sales protocol adds tremendous value that cannot be replaced by the Internet. The ITF generally recommends that the Internet be used primarily to improve the sales process within the current motor vehicle sales statutory and regulatory framework.

The ITF supports the proposition that the Internet can be a valuable marketing tool for licensed Virginia motor vehicle dealers, third-party vendors, third-party dotcoms, and manufacturers. Under certain circumstances, the ITF also favors the submission of some paperwork online as a means to expedite the sales process and foster consumer awareness and trust. In limited situations, the ITF supports the idea of consumers purchasing a vehicle completely “online.”

However, the ITF also believes that the presence of the Internet should not disrupt the integrity of the current statutory and regulatory scheme. The ITF’s recommendations continue to recognize the importance of the franchisor / franchisee distribution sales system, as well as the integral role performed by licensed motor vehicle dealers and salespersons. In addition, the ITF’s recommendations recognize and preserve those practices that have heretofore resulted in benefits to consumers, and reaffirm opposition to those practices that could be injurious to consumers.

The ITF believes that the sale of motor vehicles must be regulated by the Motor Vehicle Dealer Board and the Department of Motor Vehicles and believes that continuing to license dealers and salespersons is the best way to do so. In addition, the ITF supports the idea that the sale of motor vehicles should be limited to licensed Virginia motor vehicle dealers exclusively, and that out-of-state licensed dealers, manufacturers, brokers, third-party vendors and dotcoms should be prohibited from acting as a motor vehicle dealer in Virginia without first obtaining a license to do so.

In sum, the ITF supports a marriage between the traditional motor vehicle sales paradigm in Virginia and the Internet. The ITF anticipates that the result of such union will be beneficial to consumers, licensed motor vehicle dealers and all other parties associated with the sale of motor vehicles in the Commonwealth.

III. Conclusions of Model Discussions by the Internet Task Force

The ITF discussed and voted on the permissibility of certain activities on the Internet by several different groups. These groups included (A) Licensed Virginia Motor Vehicle Dealers; (B) Out-of-State Licensed Motor Vehicle Dealers; (C) Manufacturers; (D) Unlicensed Third Party Vendors; and (E) Single Entities Licensed as a Motor Vehicle Dealer in Virginia and some other State(s). The members of the ITF were first asked to consider certain hypothetical models (i.e., fact-specific situations) regarding each group as these models will affect the sale and lease of motor vehicles in Virginia. After discussing each model, the members of the ITF voted on the model as a matter of policy for Virginia, considering the effect that such model would have on consumers, licensed motor vehicle dealers, manufacturers, and other interested parties.

A. Licensed Virginia Motor Vehicle Dealer Internet Activity

The ITF supports the idea that a motor vehicle dealer licensed to conduct business in Virginia should be permitted to establish a web presence (or “website”) on the Internet. The dealer should be able to include the dealer’s inventory, directions, hours of operation and other static information on the website. Such activity is viewed by the ITF Members as analogous to any other form of advertising.

In addition, the ITF supports the idea that a motor vehicle dealer licensed to conduct business in Virginia should be permitted to complete paperwork online. Both consumers and licensed Virginia motor vehicle dealers can benefit from using the Internet as a means to expedite the sales process, and the placement of paperwork online permits consumers to review paperwork at their convenience. The ITF also agrees that a licensed Virginia motor vehicle dealer should be able to complete all paperwork online and effectively “sell” the vehicle over the Internet. Under this model, the consumer would be required to visit the selling dealership and take physical possession of the vehicle, though all sales documents have been completed through an electronic data exchange between the selling dealer and the consumer.

The ITF supports the idea that a consumer can complete all paperwork online with one licensed Virginia motor vehicle dealer and subsequently take physical possession of the vehicle from a different licensed Virginia motor vehicle dealer. If the vehicle is sold as new, both licensed Virginia motor vehicle dealers must be authorized to sell that same line-make of vehicle by proper licensure as a franchised dealer. Similarly, the ITF supports the model where all sales related documentation is completed online and the vehicle is physically delivered by an employee of the dealership to a consumer at a location designated by the consumer. If the vehicle is new in this second scenario, the vehicle should be prepped by the selling dealership before the vehicle is physically delivered to the consumer. The ITF opposes models where the person delivering the vehicle is not an employee of the selling dealership, regardless of whether the person delivering the vehicle is somehow “certified” to perform such service.

B. Out-of-State Licensed Motor Vehicle Dealer Internet Activity

The ITF supports the idea that an out-of-state dealer may establish a website. The out-of-state dealer may include the dealer's inventory, directions, hours of operation and other static information on the website. Such activity is viewed by the ITF Members as analogous to any other form of advertising. The ITF favors the idea of some paperwork being completed online through an out-of-state dealer's website, so long as the consumer visits the out-of-state dealer to complete the sale. The ITF also supports the idea of physical delivery of a vehicle from the out-of-state dealer's business location to a consumer in Virginia by an employee of the out-of-state dealer, so long as the consumer completes all paperwork at the out-of-state dealership prior to moving the vehicle into Virginia.¹

The ITF supports the idea that an out-of-state dealer may establish an interactive website where the consumer can complete paperwork online and then physically deliver the vehicle from its out-of-state location to a licensed Virginia dealer for consummation of the sale. For vehicles that are sold as new, the Virginia licensed dealer shall be franchised to sell the same line-make as the new vehicle.

The ITF supports the idea that a consumer can complete all paperwork online through an out-of-state dealer's website, so long as the consumer either visits the out-of-state dealership to take physical possession of the vehicle or takes physical possession from a licensed Virginia dealership. Finally, the ITF supports the situation where all paperwork is completed online by a Virginia consumer through an out-of-state dealer's website and then the vehicle is physically delivered to the Virginia consumer at a location designated by the Virginia consumer, but only when the person who physically delivers the vehicle to the consumer is an employee of the out-of-state dealer.

C. Manufacturer Internet Sales Activity

The ITF opposes the selling of vehicles online by manufacturers to Virginia consumers. This position is consistent regardless of whether the physical delivery of the vehicle occurred (1) at the consumer's home, (2) at a Virginia dealership, or (3) at an out-of-state dealership that would deliver the vehicle into Virginia to the Virginia consumer.

D. Unlicensed Third-Party Vendors, Including Brokers and Dotcoms

The ITF supports the idea that an unlicensed third-party vendor may establish a website that includes the inventory of different dealers, so long as consumers must visit the dealer where a vehicle is located to purchase the vehicle. This situation includes, but is not limited to, "referrals" sent to dealers from the unlicensed third-party. However, the ITF limits support of this model to situations where payment for this service from the motor vehicle dealer to the unlicensed third-party vendor is not "transactional." That is, the ITF supports the idea that licensed motor vehicle dealers may only compensate an unlicensed third-party vendor by a flat payment structure (e.g., per month) rather than per sale, per referral or any other transactional basis.

The ITF also supports the idea that an unlicensed third-party vendor may accept certain “non-transactional” paperwork through their websites, so long as the consumer must visit a licensed Virginia motor vehicle dealer to complete the sale and take physical possession of the vehicle.² The ITF opposes the idea that unlicensed third-party vendors may sell a vehicle online. Similarly, the ITF opposes the idea that consumers may complete all paperwork online (including “transactional” paperwork) through the third-party website and subsequently visit a licensed dealer to take physical possession of the vehicle.

E. Single Entity Licensed as a Motor Vehicle Dealer in Virginia and Other State(s) with a Centralized Website

The ITF supports the idea of an entity, licensed as a motor vehicle dealer in Virginia and at least one other state, placing its inventory of all vehicles at a centralized website along with other static information. This support is consistent regardless of whether the motor vehicles are the same line-make, different line-makes or used vehicles.³

The ITF supports the idea of a single entity, licensed as a motor vehicle dealer in Virginia and at least one other state, moving a used vehicle from a dealership outside Virginia to a dealership inside Virginia and then having a consumer visit the Virginia dealership to complete the sales transaction. However, if the vehicle is new, the ITF opposes the sale of the vehicle from the Virginia dealership unless the Virginia dealership is a franchised dealer for the same line-make as the new vehicle.⁴

The ITF supports the idea of a single entity, licensed as a motor vehicle dealer in Virginia and at least one other state, accepting all paperwork online and subsequently delivering a new vehicle to a Virginia consumer at a location designated by the consumer, so long as the delivering employee is employed by a franchised dealer of the same line-make as the new vehicle.⁵ If the vehicle is used, the person delivering the vehicle should be an employee of the selling dealer.

IV. Legal Issues and Analyses Affecting Policy Preferences

A. Electronic Contracts and Signatures – Federal Legislation⁶

Perhaps the greatest uncertainty that has plagued Internet transactions is the enforceability of contracts entered into through the Internet. It is axiomatic that certain contracts (most notably (1) the sale of goods with a value equal to or greater than five hundred dollars; (2) services that cannot be performed within one year; and (3) certain co-signers on a debt) must be in “writing” and must be “signed by the party to be charged” to be enforceable. In addition, the statutory scheme that regulates motor vehicle sales in Virginia requires that certain documents and notices be presented to consumers in writing and that certain documents be signed by both the seller and buyer.

In response to this uncertainty, the federal Electronic Signatures in Global and National Commerce Act (the “ESGNCA”) was signed into law in June of 2000 and became effective October 1, 2000.⁷ This new law states in part:

Notwithstanding any statute, regulation or other rule of law...with respect to any transaction in or affecting interstate or foreign commerce (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

In addition, the ESGNCA states that if a “statute, regulation, or other rule of law requires” that information regarding a transaction be “provided or made available to a consumer in writing, the use of an electronic record to provide or make available...such information satisfies” the writing requirement if the consumer consents to the use of such electronic record. The ESGNCA also provides that where “a statute, regulation, or other rule of law” requires that a document be “retained,” the retention by a party of the electronic record meets this requirement if it can be reproduced accurately.

B. Electronic Contracts and Signatures – Virginia Legislation

The ESGNCA is subject to preemption by “State statute, regulation or other rule of law” in limited circumstances. Most importantly, if a State enacts the Uniform Electronic Transactions Act (the “UETA”), the UETA is to be applied. Virginia’s version of UETA became effective on July 1, 2000.⁸ This law provides in part that when the parties have agreed to conduct transactions by electronic means:

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

- (b) *A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.*
- (c) *If a law requires a record to be in writing, an electronic record satisfies the law.*
- (d) *If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.*

In addition, Virginia's UETA permits items to be notarized and acknowledged over the Internet and permits the parties to retain "records" in electronic form to meet record retention requirements. Virginia's UETA also states,

*If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver **information** [emphasis added] in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.*

The full impact of the federal ESNCA and Virginia's UETA on motor vehicle sales in Virginia is currently uncertain. While both laws validate online activity by providing legal recognition of electronic contracts and signatures, the complexity of motor vehicle sales does not lend itself to full consummation of vehicle sales over the Internet. However, it is clear that the ESNCA and Virginia's UETA will permit paperwork to be completed online and that such paperwork can meet any "writing" or "signed" requirement.

C. Buyer's Order

In Virginia, every motor vehicle dealer must complete, in duplicate, a buyer's order for each sale or exchange of a motor vehicle.⁹ A copy of the buyer's order form must be made available to a prospective buyer during the negotiation phase of a sale and prior to any sales agreement. The completed original must be retained for a period of four years and a duplicate copy must be delivered to the purchaser at the time of the sale or exchange of the motor vehicle. The buyer's order must contain a litany of information to comply with Virginia law.

Based on the above discussion of the ESNCA and Virginia's UETA, it is clear that a motor vehicle dealer may provide a buyer's order online to a consumer, and that a consumer may complete a buyer's order online. However, the requirement that the dealer complete a buyer's order in duplicate may not be met by simply providing a completed buyer's order to a consumer over the Internet.¹⁰ A motor vehicle dealer in Virginia could comply with the buyer's order statute and execute a buyer's order online by adopting the following protocol:

- ◆ Consumer accesses website and submits information.
- ◆ Dealer prints out a buyer's order (a hard copy), in duplicate, reflecting the information provided by the consumer.

- ◆ Dealer sends an email response to the consumer and attached thereto is an electronic version of the buyer's order.
- ◆ The consumer may then review the buyer's order on-screen (a third-copy) or opt to have the duplicate hard-copy mailed to him or her.
- ◆ If the consumer decides to purchase the vehicle, the consumer may sign the buyer's order using an electronic signature.
- ◆ The duplicate hard-copy is delivered to the consumer at the time the vehicle is physically delivered to the consumer.

D. Retail Installment Contract

Motor vehicle retail installment contracts implicate both federal and state law. The federal laws in question are Regulation Z and Regulation M under the federal Truth in Lending Act ("TILA").¹¹ Generally, TILA requires disclosure of certain information to a consumer in writing when the consumer enters into a transaction involving the extension credit.¹² A recent federal court case reaffirmed that TILA requires that such disclosures be provided in writing in a form the consumer can keep in advance of any decision by the consumer to purchase the item.¹³ Based on the above discussion of the ESGNCA and Virginia's UETA, it is clear that the federal Truth in Lending Act disclosures may be made to consumers through the Internet, so long as such disclosures comply with the requirements of the ESGNCA and Virginia's UETA.¹⁴ Virginia's disclosure requirements for retail installment contracts may also be met through compliance with the ESGNCA and Virginia's UETA.¹⁵

E. Credit Application

A credit application may be submitted by a consumer through the Internet and a motor vehicle dealer and/or finance company (i.e., lender) may request a credit report based on this credit application, so long as the party requesting the credit report has a "permissible purpose" for doing so.¹⁶

F. Manufacturer's Statement of Origin / Certificate of Origin

The Manufacturer's Statement of Origin / Certificate of Origin ("MSO/CO") need not be provided to consumers prior to consummation of the sale of a new motor vehicle. However, the MSO/CO must be delivered to the purchaser and should be maintained on the new vehicle until the purchaser takes physical possession of the vehicle.

G. Buyers Guide

The federal Buyers Guide must appear on every used vehicle offered for sale in Virginia by a used motor vehicle dealer.¹⁷ Under federal law, the seller of the vehicle can opt whether to have the purchaser sign the Buyers Guide; however, under Virginia law, the seller of the vehicle must have the Buyers Guide signed by the purchaser.¹⁸ There is no requirement under Virginia law that the consumer review the Buyers Guide prior to consummating the sale of a motor vehicle, but the dealer must make available, prior to the sale, the terms of any written

warranty offered in connection with the sale of a used vehicle [or the dealer may disclose that the vehicle is sold without a warranty].

Electronic disclosure of the Buyers Guide may, however, be a problem under Federal law without action by the Federal Trade Commission. The regulations implementing the Used Car Rule state that the Buyers Guide must be displayed on the vehicle prominently and conspicuously.¹⁹ Moreover, the regulations are quite specific regarding all aspects of the format of the Buyers Guide.²⁰

H. Motor Vehicle Title (Used Vehicles)

Several Code provisions relating to titling motor vehicles trigger important issues for carrying out the preferences expressed by the ITF. Virginia law requires the Department of Motor Vehicles (the “DMV”) to note any security interests in a used motor vehicle on the face of the title to the vehicle.²¹ The purpose of this law is to provide adequate notice to all creditors and purchasers of the security interest, making any further recordation of the lien on the motor vehicle unnecessary.²² Finally, in Virginia a motor vehicle dealer is required to “correctly endorse” and “deliver” the title of a motor vehicle to a purchaser “at the time of delivering the motor vehicle.”²³ All titles are required to appear in a certain format to comply with federal law.

1. Impact of Federal ESGNCA and Virginia’s UETA on Virginia’s Titling Laws

While the federal ESGNCA and Virginia’s UETA would permit a dealer to “correctly endorse” and “deliver” the certificate of title by way of the Internet, the ITF does not believe that this is currently possible. The certificate of title is a product of the DMV, and a dealer can neither “correctly endorse” nor “deliver” a certificate of title if the document has not been produced by the DMV first. At the present time, the DMV does not have in place a totally paperless system that would provide for the electronic “endorsement” and “delivery” of titles. The DMV is, however, making preparations to participate in a totally paperless, electronic titling pilot project with its counterparts in Wisconsin and Arizona. The purpose of the project is to identify and develop resolutions to issues, such as reconciliation with federal odometer disclosure requirements, which would be presented by a totally paperless titling system. Although it is anticipated that in the future, a system permitting the totally paperless creation and transfer of titles will exist, currently such a system is not available. Hence, not all documents are currently capable of being provided and completed online, despite the federal ESGNCA and Virginia’s UETA.

2. Impact of Unavailability of Online Titles on ITF Preferences

In order to effect a transfer of the ownership of a used motor vehicle in Virginia, two things are required: (1) the owner must actually deliver the endorsed certificate of title to the transferee, and (2) the owner must deliver possession of the vehicle to the transferee.²⁴ Because of this, a true online “sale” for used vehicles cannot currently be accomplished in Virginia.²⁵ That is, if a dealer completes all paperwork online except the title, the agreements made online are executory and not executed; and legal title to the vehicle remains in the seller.²⁶ Therefore, if a dealer provides all paperwork through its website to consumers (except for the

vehicle title), the sale is not complete until both the endorsed certificate of title and the vehicle are provided to the consumer.

The ITF preferred that a dealer be able to complete all paperwork online; but due to the reasons outlined above, this does not appear to be feasible at this time. Further, a “sale” cannot be completed online, though most paperwork leading up to a sale can be completed online. This means that only persons who are permitted by law to sell a vehicle in Virginia (i.e., a licensed Virginia salesperson) may deliver a used vehicle and its title to consumers in Virginia. This is the case because the actual “sale” of the used vehicle is completed at the time the certificate of title and vehicle is provided to the buyer. For this reason, third-party vendors, dotcoms, out-of-state licensed salespersons and manufacturer employees cannot physically deliver a used vehicle to a consumer in Virginia. Even a single entity, licensed as a motor vehicle dealer in Virginia and at least one other state, with a centralized website could not physically deliver the vehicle from outside of Virginia into Virginia to a consumer.

I. “Delivery” and the Sale of a Motor Vehicle

An equally challenging issue for the ITF involves the “delivery” of a motor vehicle as part of the process necessary to effectuate the sale of a motor vehicle. There are two provisions in the Virginia Code that appear to bifurcate the sale of a motor vehicle into the “sale” and the “delivery” of the motor vehicle.²⁷ This suggests that physical delivery of the vehicle is not necessarily part of the sales process. However, as noted above, case law considers “delivery” to be a necessary element in the sales process. The ITF noted that the definition of delivery is unclear and could be construed to mean either (1) physically transferring/moving the vehicle from one place to another to the buyer or (2) merely providing to the consumer the keys, plates, paperwork and similar items ordinarily provided at the end of the sales process.

It would be unusual for the Virginia General Assembly to envision a situation where “delivery” would encompass anything more than providing the vehicle to a consumer at the dealer’s physical location. It would seem more likely that the intent of the Virginia legislature, in using the term “deliver” was to communicate the offering (i.e., tendering or surrendering) of the vehicle to the consumer at the dealer’s licensed location. Of course, the word “delivery” is more commonly known to suggest some form of physical relocation, which would seem to include such acts as “home delivery.” In short, how the term should be interpreted when construing the statutes is uncertain, and the ITF did not reach a consensus as to the correct interpretation of this term.

J. Dealer and Salesperson Licensure

It is unlawful for any person to engage in business in Virginia as a motor vehicle dealer or salesperson without first obtaining a license to do so from the DMV.²⁸ The definition of “dealer” is very broad, and the licensing requirement for persons who engage in such activities could be interpreted to limit many forms of Internet activity.²⁹ However, the definition of “salesperson” seems limited to a person who sells or exchanges motor vehicles.³⁰

The ITF policy preferences are impacted by the licensing requirement. As noted above, Virginia construes delivery of title and delivery of the motor vehicle as part of the sales process. Therefore, out-of-state licensed dealers are prohibited from bringing a vehicle into Virginia to a consumer because the sale has not been completed. Further, the definition of “dealer” could prohibit an out-of-state dealer from even accepting paperwork over the Internet from Virginia consumers, as such dealers would be “arrang[ing] or offer[ing]...a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone” without being appropriately licensed.

Unlicensed third-party vendors are also impacted by the license requirement, as even a non-transactional fee structure (a yearly or monthly payment structure) could be construed to be “attempt[ing] to solicit or negotiate on behalf of others a sale, purchase, or exchange of [a motor vehicle]...whether or not the motor vehicles are owned by him.” Of course, the definition of “motor vehicle dealer” excludes “[a]ny publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.” If such unlicensed third-party vendors are to meet this advertising exception, their activity should be limited to those activities commonly undertaken by other media. Even accepting non-transactional paperwork, while preferred by the ITF, may not be permissible without a license.

K. Three-Day “Cooling-Off” Rule for Home Solicitation Sales

Under both federal and state law, a consumer may rescind a contract for three days when the sale qualifies as a “home solicitation sale.”³¹ The federal law exempts transactions involving the sale of motor vehicles from its coverage.³² However, Virginia’s Home Solicitations Sales Act offers no such exemption and could be held to apply to the sale of motor vehicles where the consumer takes physical possession of the vehicle at the consumer’s home.³³ Home Solicitation Sales do not include a sale or lease made pursuant to prior negotiations between the parties, which may be argued to remove such transactions involving home delivery of a motor vehicle from its coverage.

v. Additional Views of ITF Members

(Note: At the conclusion of the last ITF meeting, Rick Holcomb offered each ITF member the opportunity to submit comments regarding the final ITF report. In response, the following comments were received. Because the ITF neither discussed these comments nor voted on them, the impact that these comments will have on this final report has been left to the discretion of the Motor Vehicle Dealer Board during its review.)

Dear Bruce:

This letter is provided as a response to the draft report of the Internet Task Force on behalf of the Alliance of Automobile Manufacturers. The Alliance is a coalition of 13 car and light truck manufacturers, representing BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi Motor, Nissan, Porsche, Toyota, Volkswagen and Volvo Cars. It serves as a leading advocacy group for the automobile industry on public policy matters.

The Alliance appreciates the opportunity to participate in the proceedings of the task force and commends Commissioner Holcomb for his foresight in establishing it. The member companies of the Alliance recognize the immense potential of the Internet and the positive impact for consumers in the car buying experience. Through our continued support of the distribution system that is our dealers, the manufacturers believe that consumers should be unfettered in their use of the Internet to work within that system.

The task force considered many models of current Internet use in the sale of new and used cars. Based on the discussions surrounding those uses, there were a variety of interpretations as to what exactly was being considered. For example, “non-transactional” paperwork could be defined as securing financing from an unlicensed third party (Alliance position), while other members of the task force supported an opposite definition.

Generally, the Alliance agrees with the direction of the draft report. However, the models discussed by the task force may not provide the appropriate guidance on any particular legislative initiative for the Motor Vehicle Dealer Board to take a position. The Alliance believes that the board should use the report as reference material in developing a position, but not as the basis of that position.

The work of the task force is a good first step in recognizing the changes affecting our industry, but should not be the foundation of policy decisions. In the end, the Alliance believes that maximizing the benefits of the Internet to the consumer is our mutual and ultimate goal, and that our manufacturing and distribution system should respond to the consumers’ preferences when at all possible.

James W. Beamer
JWB Consulting Company

Dear Bruce:

This is in response to your letter of December 11 regarding the Internet Task Force meeting. At that time it was determined that all comments on the draft report be reviewed and forwarded to you by December 20.

The first comment I have is that the ITF should take a position on this issue and recommend that the Motor Vehicle Dealer Board take the position that the delivery is part of the sales process. That would fall under Section IV (I).

Additionally, on page 6 under D. Unlicensed Third Party Vendors, Including Brokers and Dotcoms, this particular issue should be stricken as the VA Dealer Code clearly defines "bird-dog" fees. Until the code is amended, I do not feel there should be any discussions along these lines. I would submit that the Task Force report should reflect the general agreement among the members that the situations described involving a flat payment structure are allowable under current Virginia statute. I would not however agree that this opinion extends to remove all concern about the involvement of unlicensed third parties with consumers in their purchase of vehicles so long as they contort their fee structure to fit within current code. I would like to have that reservation noted so that this report cannot be used as a defense by unlicensed persons or companies who attempt to skirt the spirit of the law by crafting a clever fee structure for their programs. The important statutory framework developed by the Virginia Assembly to protect consumers in the car buying process, and not merely how they charge for their services, should remain the yardstick by which to measure these third parties.

Bruce Farrell
President
Berglund Chevrolet Buick Jeep

Dear Bruce:

On behalf of Greenlight.com and its Task Force representatives, and upon review of the draft of the Legal Subcommittee's Report, I have the following recommendations in the nature of clarifying amendments. These amendments are proposed in the interest of insuring that non-motor vehicle sales transactions and other useful communication may occur between a consumer and "third-party dotcoms."

As a threshold matter, at page 6 (III.D), I would suggest that it is inappropriate to include many "dotcoms" in the "Unlicensed Third-Party Vendors" (emphasis supplied) category. The concern here is that, although some third-parties may actually engage in or be actively involved in the sale of a motor vehicle (i.e., "vendors"), many are merely engaged in activities that may facilitate a sale, and they prefer the dealer to negotiate and consummate the motor vehicle sale directly with the customer. I suggest that the paragraph heading more properly be titled "Unlicensed Third Parties." Furthermore, in the body of that paragraph, delete the word

“vendor;” also, in the first sentence of the paragraph, after “unlicensed third-party,” insert “(whether it be a vendor, broker or dotcom)”

Furthermore, in “Endnote” 2, the report endeavors to define “non-transactional.” From the discussions of the Task Force, and in the interest of precision and clarity, I believe that “non-transactional” is best interpreted by deciding to what “transaction” we are speaking. Clearly, the “transaction” is that of the sale of the motor vehicle, itself. Extending the “transaction” to include sale of, e.g., insurance and other products or services not necessarily required in every sale of a motor vehicle would, in my opinion, be overreaching.¹ In light of the above, I recommend that “Endnote” 2 be amended, as follows:

2. “Non-transactional” paperwork was not defined by the ITF but appears to mean that paperwork submitted by a consumer through a website and which is not part of the sale process necessarily a part of the sale of a motor vehicle by a motor vehicle dealer to a customer. Clearly, a buyer’s order and retail installment contract would be considered transactional paperwork. However, there was some debate as to whether a credit application is transactional when it is submitted for the expressed purpose of financing the purchase of a particular motor vehicle and the ITF did not reach a consensus on the matter. ~~A credit application seems to be transactional paperwork if the intent of the consumer in submitting the credit application is to purchase a particular vehicle and proceed with the purchase process. However, a credit application seems to be “non-transactional” paperwork if the consumer has submitted the credit application intending only to determine the terms that would be offered by a particular finance company (i.e., lender) to the consumer without contemplating the purchase of a particular vehicle.~~

I greatly appreciate the opportunity to work with the Internet Task Force and the legal subcommittee which, throughout this project, have demonstrated exemplary dedication and professionalism.

William T. Lehner
Attorney
Sands Anderson Marks & Miller

¹ At its September, 2000 meeting, the Licensing Committee of the Motor Vehicle Dealer Board, after due consideration, declined to act upon a suggestion that a person engaged in the sale of finance and insurance products, in connection with the sale of a motor vehicle, should be licensed as a motor vehicle salesperson.

VI. APPENDIX I

In an attempt to reach a consensus on each of the following models, Task Force members voted according to what each member believed should be the policy in Virginia.

LICENSED VIRGINIA DEALER INTERNET ACTIVITY

1. A Virginia dealer's inventory and other information is included on its website; however, the website is not interactive. The consumer cannot conduct business over the Internet and must visit the dealer for completion of all paperwork to consummate the sale.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
18				

2. A Virginia dealer's inventory and other information is included on its website; however, the website is interactive in that the consumer can complete some paperwork online but must visit the dealer to finalize the sale.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
16	2			

3. A Virginia dealer's inventory and other information is included on its website. The website is interactive in that the consumer can complete all of the paperwork online.

(a) Consumer must pick the vehicle up at the dealer.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
6	7		4	

(b) Consumer can complete the paperwork on-line and "order" from one Virginia dealer and pick it up at a local VA dealership ("Courtesy Delivery"). Must be the same line-make for new cars.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
3	11		3	

(c) Consumer can complete the paperwork on-line and the consumer does not visit dealership at all:

(1) With dealer "prepping" the vehicle and delivering to consumer

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
9	1	1	1	2

(2) With a certified agent delivering vehicle to consumer (not an employee of the dealership)

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
2	1	2	6	3

(3) With a 3rd party (anyone) delivering the vehicle to consumer.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
1		1	5	7

**OUT-OF-STATE DEALERS INTERNET ACTIVITY
(Consumer is a Virginia resident.)**

1. (a) An out-of-state dealer's inventory and other information is included on its website; however, the website is not interactive. The consumer cannot conduct business over the internet and must visit the dealer for completion of all paperwork to consummate the sale.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
12	4	1		

- (b) Once the sale is consummated, the vehicle can be delivered to the consumer by the dealer's employee, in Virginia.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
8	7	2		

2. (a) The out-of-state dealer's inventory and other information is included on its website; however, the website is interactive in that the consumer can complete some paperwork online but must visit the dealer to finalize the sale and the vehicle can be delivered to the consumer in Virginia.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
10	5	1	1	

- (b) The vehicle can be delivered for the customer, to a Virginia licensed dealer. For franchise dealers, must be same line-make.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
7	5	1	1	

3. The out-of-state dealer's inventory and other information is included on its website; however, the website is interactive in that the consumer can complete all of the paperwork online.

- (a) Consumer must pick the vehicle up at the out-of-state dealership.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
5	10	2		

- (b) Consumer may take delivery of vehicle at a local dealership.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
8	6	2	1	

- (c) 1. The vehicle may be delivered to the consumer.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
4	1	1	8	

2. Employee of the dealer delivering:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
7	1	1	4	1

MANUFACTURER

The manufacturer's inventory and other information is included on its website; however, the website is interactive in that the consumer can complete all of the paperwork online (Purchase directly through the manufacturer).

(a) The manufacturer delivers to the consumer at home (Rick H. did not vote)

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
		2	2	12

(b) The manufacturer delivers to a Virginia dealership. (Rick H. did not vote)

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
		2	3	11

(c) The manufacturer delivers to an out-of-state dealership. (Rick H. did not vote)

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
		2	1	13

UNLICENSED THIRD PARTY VENDORS, BROKERS AND DOTCOMS

1. The third party website includes the inventory and price of vehicles for dealers. Consumer cannot conduct business over the internet. The consumer must visit the dealer if they wish to purchase a vehicle (This model includes those where the consumer indicates what they are interested in purchasing, and the third party refers the consumer to a dealer or the third party passes the consumer's name to a dealer).

a) Dealer pays a set, monthly fee to the vendor.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
7	5	5		

b) Dealer pays the vendor for every vehicle sold.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
3	1	4	4	4

c) Dealer pays the vendor for all "leads" regardless of whether it leads to a sale.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
3	1	5	3	5

2. The third party website includes the inventory and price of vehicles for dealers. The website is interactive in that the consumer can complete some of the paperwork online but must visit the Virginia licensed dealer to pick-up the vehicle and complete any necessary paperwork.

Some paperwork completed on-line, but non-transactional.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
8	2	1		2

3. The third party website includes the inventory and price of vehicles for dealers. The website is interactive in that the consumer can complete all of the paperwork online but must visit the Virginia licensed dealer to pick-up the vehicle.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
		3	2	11

4. Unlicensed Dotcoms can sell on the internet.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
		2	1	14

A SINGLE ENTITY OWNS LICENSED LOCATIONS IN VIRGINIA AND OTHER STATES. THEY HAVE THEIR OWN “CENTRAL” WEBSITE.

1. The entity places its inventory of all vehicles at all locations on its website. If a consumer is interested in purchasing a vehicle at one of the dealerships, the consumer must visit that particular dealership. No sale process begins at the first dealership other than viewing the inventory.

(a) The dealers are the same line-make:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
16	1			

(b) The dealers are a different line-make:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
16	2			

(c) Previously owned vehicles:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
16	1	1		

2. The entity places its inventory of all vehicles at all locations on its website. The consumer is given a price for a certain vehicle from the central website. The entity arranges for the chosen vehicle to be delivered to the dealer nearest the consumer, and the consumer closes the deal at the local location. (Rick H. did not vote)

(a) Dealers are a different line-make:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
2	2	1		12

(b) Preowned vehicles:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
13		5		

3. The entity places its inventory of all vehicles at all locations on its website. The consumer is given a price for a certain vehicle from the central website. All paperwork is completed online. The entity arranges for the chosen vehicle to be delivered to the customer.

(a) Employee of the entity to deliver vehicle:

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
1	5		3	3

(b) Employee of the dealer’s specific line to deliver vehicle.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
4	4		2	2

ENDNOTES

¹ As an example, if a Virginia consumer visits a licensed Maryland dealership and purchases a vehicle from that dealership, an employee of that dealership should be able to bring the purchased vehicle to the consumer in Virginia after the sale. This may be appropriate where the consumer has driven to the Maryland dealership and is now at the dealership with two different vehicles to bring back to Virginia – the car purchased from the Maryland dealer and the car driven into Maryland. If an employee of the Maryland dealership drives the vehicle into Virginia for the Virginia consumer, this is no more than a courtesy.

² “Non-transactional” paperwork was not defined by the ITF but appears to mean “that paperwork submitted by a consumer through a website that is not part of the sales process.” Clearly, a buyer’s order and retail installment contract would be considered transactional paperwork. However, there was some debate as to whether a credit application is transactional, and the ITF did not reach a consensus on this matter. A credit application seems to be transactional paperwork if the intent of the consumer in submitting the credit application is to purchase a particular vehicle and proceed with the purchase process. However, a credit application seems to be “non-transactional” paperwork if the consumer has submitted the credit application intending only to determine the terms that would be offered by a particular finance company (i.e., lender) to the consumer without contemplating the purchase of a particular vehicle. (Refer to Section V for an alternative version of this Endnote.)

³ For example, a website that includes new or used Mitsubishis, Fords and BMWs is acceptable.

⁴ For example, if a West Virginia Nissan Dealer and a Virginia BMW dealer are owned by the same entity with a centralized website, and a Virginia consumer visits the website and wishes to purchase a new Nissan, the new Nissan could not be physically delivered to the Virginia BMW dealer for completion of the sale.

⁵ For example, if a West Virginia Nissan Dealer and Virginia BMW dealer are owned by the same entity with a centralized website, and a Virginia consumer visits the website and wishes to purchase a new Nissan, the new Nissan could be physically delivered to the consumer by an employee of the Nissan dealership.

⁶ The analyses of the federal Electronic Signatures in Global and National Commerce Act and Virginia’s version of the Uniform Electronic Transactions Act should not be considered comprehensive. While both laws clearly impact the policy preferences expressed by the ITF, both laws are very new and more complicated than this discussion may intimate. Further analyses of both laws are recommended if a substantive policy decision is made by the Motor Vehicle Dealer Board.

⁷ 15 U.S.C.A. § 7001 *et seq.*

⁸ VA. CODE ANN. § 59.1-479 *et seq.*

⁹ VA. CODE ANN. § 46.2-1530.

¹⁰ Virginia’s UETA could be argued to require the dealer to continue to provide the buyer’s order in duplicate to comply with Virginia law. *See* VA. CODE ANN. § 59.1-486 (b). However, such broad interpretation would effectively emasculate the intent of Virginia’s UETA and seems unlikely.

¹¹ 12. C.F.R. § 226.1 *et seq.*; 12 C.F.R. § 213.1 *et seq.*

¹² Under TILA, disclosures must be made to the consumer in a form the consumer may keep before consummation of a transaction. 12 C.F.R. § 226.17; 12 C.F.R. § 213.3.

¹³ Polk v. Crown Auto, Inc., 221 F.3d 691 (4th Cir. 2000).

¹⁴ The Federal Reserve Board is currently considering proposed regulations concerning electronic delivery of federally mandated disclosures to consumers, including disclosures under Regulation Z (credit) and Regulation M (leasing). These regulations will establish procedures for electronic delivery of these disclosures.

¹⁵ VA. CODE ANN. §§ 6.1-330.47 – 6.1-330.90.

¹⁶ 15 U.S.C.A. § 1681 *et seq.* The FTC has written advisory response letters to Phil Landever (October 12, 1999) and Karen Coffey (February 11, 1998) that address motor vehicle dealer activity in regards to requesting credit reports, though these letters are not to be relied upon as the FTC's final position on such matters.

¹⁷ 16 C.F.R. § 455.1 *et seq.*

¹⁸ VA. CODE ANN. § 46.2-1529.1.

¹⁹ 16 C.F.R. § 455.2(a)(1).

²⁰ The Rule provides, "The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7 1/4 inches wide in the type styles, sizes and format indicated." 16 C.F.R. § 455.2(a)(2).

²¹ VA. CODE § 46.2-636; *See also* GMAC v. Smith, 377 F.2d 271, 272-273 (4th Cir. 1967); In re Johnson, 179 B.R. 800, 804 (Bankr. E.D. Va. 1995); Lubman v. J.B. Eurell, Co. (In re Fredgosi), 23 B.R. 641, 643 (Bankr. E.D. Va. 1982).

²² VA. CODE ANN. § 46.2-638; *See also* GMAC, 377 F.2d at 272-73.

²³ VA. CODE ANN. § 46.2-628.

²⁴ *See* AllState Ins. Co. v. Atlanta Ins. Co., 530 S.E.2d 161, 165 (Va. 2000) (citing Nationwide Ins. Co. v. Storm, 200 Va. 526, 528-29 (1959)). This appears to be the most recent word on this issue from the Virginia Supreme Court.

²⁵ It should be noted that at least one section of the Virginia Code regulating "Titling, Registration and Licensure" contemplates the "Sale of a vehicle without [a] certificate of title," contradicting this supposed truism. VA. CODE ANN. § 46.2-617. In addition, a "retail installment sale" is defined as "every *sale* of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and *in which the seller has either retained title to the goods or has taken or retained a security interest in the goods* [emphasis added] under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise." VA. CODE ANN. § 46.2-1500. This also appears to contradict the idea that ownership passes with the "physical delivery" of the paper title. *See also* Footnote 27.

²⁶ *See* Unites States v. One Hudson Hornet Sean, 110 F. Supp. 41 (W.D. Va. 1953); F&M Bank v. Law, 1 Bankr. 557 (Bankr. W.D. Va. 1979).

²⁷ VA. CODE ANN. § 46.2-1542 (Dealing with temporary certificates of ownership) and VA. CODE ANN. § 46.2-1552 (Dealing with the use of dealer's license plates on newly purchased vehicles). The plain meaning of each statute seems to distinguish between a "sale" and a "delivery," thereby suggesting that "delivery" is not necessarily part of the "sale."

²⁸ VA CODE ANN. § 46.2-1508.

²⁹ Section 46.2-1500 of the Virginia Code states that a "motor vehicle dealer" or "dealer" means any person who: 1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used

motor vehicles alone, whether or not the motor vehicles are owned by him; or

2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any twelve consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

14. The State Department of Social Services or local departments of Social Services.

³⁰ The applicable statutory provision states that a "motor vehicle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a motor vehicle dealer to sell or exchange motor vehicles. It also means any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. VA CODE ANN. § 46.2-1500.

³¹ 16 C.F.R. 429.0 *et seq.*; VA CODE ANN. § 59.1-21.1 *et seq.*

³² 16 C.F.R. § 429.3.

³³ Under Virginia law, a "home solicitation sale" means "a consumer sale or lease of goods or services in which the seller or a person acting for him engages (i) in a personal solicitation of the sale or lease or (ii) in a solicitation of the sale or lease by telephonic or other electronic means at any residence other than that of the seller; and the buyer's agreement or offer to purchase or lease is there given to the seller or a person acting for him." VA CODE ANN. § 59.1-21.2. This seems especially important as Virginia requires that (1) the owner actually deliver the endorsed certificate of title to the transferee, and (2) the owner deliver possession of the vehicle to the transferee to effect a transfer of the ownership of a used motor vehicle in Virginia. That is, if the sale is not complete until both requirements are met, the "sale" occurs at the consumer's home.